

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Complaint Regarding the
Annexation of a Portion of the Service
Territory of Peoples Cooperative Power
Association by the City of Rochester

ISSUE DATE: June 27, 1988

DOCKET NO. E-132/SA-88-270

ORDER AUTHORIZING THE PROVISION
OF ELECTRIC SERVICE DURING
PROCEEDING

PROCEDURAL HISTORY

On April 22, 1988 Peoples Cooperative Power Association (Peoples) filed a complaint against Rochester Public Utilities (RPU) with the Minnesota Public Utilities Commission (the Commission).

The City of Rochester (City) operates RPU which provides electricity within the City limits. The City recently annexed territory that Peoples claims was assigned to it during service area proceedings in In the Matter of the Establishment of Assigned Service Areas of Electric Utilities in Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha and Winona Counties, Pursuant to Chapter 429, Laws of Minnesota, 1974 (March 31, 1975).

The three-count complaint requested that the Commission issue an Order granting the following relief:

1. North Park Area

Require RPU to stop providing electric service to that area; allow Peoples to continue and to extend its electric service to the area without interference; or in the alternative issue an Order establishing a fair price to be paid by RPU to Peoples for the extension of services into the area.

2. North Park Second Subdivision

Prohibit RPU from extending electric service or expending any funds for planning or materials for an extension of services by RPU to the area; allow Peoples to continue and to extend electric service to the area unless RPU elects to purchase the facilities and the property of Peoples' pursuant to Minn. Stat. Sec. 216B.44

3. Issue an Order referring the matter of RPU's repetitive and continuing violations of Minn. Laws 1974, Chapter 429 to the Office of the Attorney General for appropriate legal action, including actions to recover penalties under Minn. Stat. Sec. 216B.61.

The City of Rochester filed its answer on April 8, 1988, requesting the Commission to dismiss the proceeding and deny the relief requested in the complaint and grant the City such relief as may be proper.

The Department of Public Service filed its Report of Investigation and Recommendation on this matter on June 2, 1988.

The matter came before the Commission on June 15, 1988. Kenneth R. Moen, Dunlap, Keith, Finseth, Berndt & Sandberg, P.A. appeared for Peoples Cooperative Power Association, Inc. Frederick S. Suhler, Jr., Rochester City Attorney, appeared for the City of Rochester. The Commission determined that a contested case hearing be conducted by the Office of Administrative Hearing to determine just compensation to Peoples for the alleged loss of property resulting from the City's annexation of the North Park First and Second Subdivisions. This was done by Notice and Order for Hearing dated June 27, 1988.

Having heard the arguments of counsel, and on the basis of the record before it, the Commission makes the following findings of fact, conclusions of law, and Order.

STATEMENT OF THE ISSUE

The Commission must determine which utility will be allowed to serve new customers in the North Park Subdivisions during the contested case hearing on just compensation. Further, the Commission must determine which utility will serve existing customers in these areas during this period.

FINDINGS AND CONCLUSIONS

The Commission finds that the material facts regarding this issue are not in dispute, but only the

ultimate question of the public interest is disputed. It concludes that the oral argument-type hearing already conducted is adequate and that no contested case hearing is necessary.

The Commission finds that the areas in dispute, North Park First and Second Subdivisions, were made part of Peoples exclusive service area in 1975. See, Order, Docket No. USA-12 (March 31, 1975). No party disputes this. Now, the City of Rochester has annexed this area. The Commission is conducting a contested case hearing to determine if compensation is due to Peoples for the loss of its property through this annexation. If so, the Commission will determine the amount of that compensation.

The Commission finds that Minn. Stat. Sec. 216B.44 (1986) governs this matter. The statute states in relevant part:

[W]henever a municipality which owns and operates an electric utility (a) extends its corporate boundaries through annexation or consolidation, or (b) determines to extend its service territory within its existing corporate boundaries, the municipality shall thereafter furnish electric service to these areas unless the area is already receiving electric service from an electric utility, in which event, the municipality may purchase the facilities of the electric utility serving the area. . . . Until the determination by the Commission [of the value of the utility's property], the facility shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional points of delivery within the annexed area if the Commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

Clearly, a municipality that operates its own electric system has the statutory right to extend its service territory to coincide with the boundaries of its municipal government. The extension of electric service may be accomplished either as part of the larger process of adding territory to the municipality through annexation or consolidation, or where the municipal boundaries already include the other company's service area, by declaration of the municipal's governing council. The statute limits the municipal's right to offer electric service to its residents only by requiring that the municipality must pay fair compensation to the displaced utility for the loss of the latter's property due to the municipal utility's extension.

The Commission finds that RPU has made substantial investments to serve people living in the First Subdivision. Further, RPU is providing electric service to the Second Subdivision where a few homes are in the process of being built.

The Commission finds that allowing Peoples to serve new customers in either the North Park First or Second Subdivision during this contested case hearing could result in unnecessary duplication of facilities. It could also result in unnecessarily high costs for RPU and its ratepayers at the end of the compensation hearing. These results would be contrary to the public interest of ensuring efficient provision of electric service at reasonable rates. Minn. Stat. Secs. 216B.01, 216B.37 (1986). The Commission will authorize the City of Rochester's municipal utility to serve any new customers in the disputed area. Peoples may continue to serve its own existing customers during

the pendency of this matter.

ORDER

1. The City of Rochester's municipal utility, Rochester Public Utilities, shall provide electric service to new customers in the North Park First and Second Subdivisions during this proceeding.
2. Peoples Cooperative Power Association may provide electric service to its existing customers in the North Park First and Second Subdivisions during this proceeding.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)